
CONCESSION CONTRACT

BETWEEN THE

CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

AND

ENCINO/BALBOA FAMILY GOLF CENTERS, INC.

FOR THE OPERATION AND MAINTENANCE

OF THE

ENCINO-BALBOA GOLF PROFESSIONAL CONCESSION

08/11/99

ENCINO-BALBOA GOLF PROFESSIONAL CONCESSION
Encino/Balboa Family Golf Centers, Inc.

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EXHIBITS

- A - CITY'S Request for Proposals dated 04/10/98.
- B - CONCESSIONAIRE'S proposal dated 6/23/98:
 - 1. Affirmative Action Requirements and Plan
 - 2. MBE/WBE and Other Business Enterprise Outreach Policy Statement
- C - CONCESSION Premises Map
- D - Insurance Requirements Form
- E - Service Contract Worker Retention and Living Wage Ordinances
 - 1. Rules and Regulations
 - 2. Declaration of Compliance
- F - Lease No. DACW 09-1-67-11 between the City of Los Angeles, Department of Recreation and Parks and the UNITED STATES ARMY, CORPS OF ENGINEERS.
- G - U.S. Army Corps of Engineers Safety and Health Requirements Manual
- H - Burma (Myanmar) Ordinance
- I - Child Support Ordinance
- J - Child Care Policy
- K - Job Training and Employment Policy
- L - Americans with Disabilities Act Policy

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THIS CONTRACT, made and entered into this 9th day of NOV 1999, by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter "CITY"), acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS, (hereinafter "BOARD"), and Encino/Balboa Family Golf Centers, Inc., (hereinafter "CONCESSIONAIRE").

WITNESSETH

WHEREAS, the principal purpose of CITY in entering into this CONTRACT is to serve the public by providing a golf professional concession; and

WHEREAS, the BOARD advertised for proposals for the operation of the Encino-Balboa Golf Professional Concession in Encino-Balboa Golf Course Complex; and

WHEREAS, the BOARD received and carefully analyzed four (4) proposals received on June 23, 1998; and

WHEREAS, the BOARD determined that CONCESSIONAIRE was the best responsible proposer, and selected said proposer to operate the CONCESSION in accordance with the terms and conditions of this CONTRACT; and

WHEREAS, CONCESSIONAIRE desires to secure and enter into a CONTRACT in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at the Encino-Balboa Golf Course Complex.

NOW THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SEC. 1 DEFINITIONS:

For the purpose of this CONTRACT, the following words and phrases are defined and shall be construed as hereinafter set forth:

CONCESSION:	Encino-Balboa Golf Professional
CONCESSIONAIRE:	Encino/Balboa Family Golf Centers, Inc.
CONCESSION MANAGER:	The person with whom the GENERAL MANAGER deals with on a daily basis regarding the CONCESSION.
CONTRACT:	This Concession Contract consisting of 34 pages and 12 Exhibits (A-L) attached thereto.
GENERAL MANAGER:	GENERAL MANAGER of the DEPARTMENT, or that person's authorized representative, acting on behalf of CITY. All actions of the GENERAL MANAGER are subject to review at the pleasure of the BOARD.
DEPARTMENT:	The Department of Recreation and Parks, acting through the BOARD.

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UNITED STATES ARMY,
CORPS OF ENGINEERS

The Corps representing the United States of America acting by and through the District Engineer, Los Angeles District. UNITED STATES ARMY, CORPS OF ENGINEERS or its duly authorized representatives.

SEC. 2 CONSTRUCTION OF PROVISIONS AND TITLES HEREIN:

All titles or subtitles appearing herein have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against CITY or the CONCESSIONAIRE. The word CONCESSIONAIRE herein and in any amendments hereto includes the party or parties identified in this CONTRACT. The singular shall include the plural if there shall be more than one CONCESSIONAIRE herein, unless expressly stated otherwise, and their obligations and liabilities hereunder shall be joint and several. Use of the feminine and masculine or neuter genders shall be deemed to include the genders not used.

SEC. 3 CONCESSION GRANTED:

CONCESSIONAIRE shall be granted the exclusive right and privilege to furnish, equip, operate and maintain the Encino-Balboa Golf Professional Concession. No other like concession will be granted at this location nor shall CITY grant a concession at this location that interferes with CONCESSIONAIRE's operations. CONCESSIONAIRE agrees and understands that there are other concessionaires operating under concession agreements and concession permits within the vicinity of the premises herein described. CONCESSIONAIRE also agrees and understands that there may also be additional future concessionaires operating under concession agreements and concession permits within the vicinity of the premises herein described. In the event of a conflict between CONCESSIONAIRE and any other concessionaire regarding the services to be provided or products to be sold by the respective concessionaires, the GENERAL MANAGER shall meet and confer with all necessary parties to determine the services to be offered or the products to be sold by each, and CONCESSIONAIRE agrees to be bound by said determination.

CITY reserves the right to further develop or improve the premises as it sees fit, provided that any such action shall not interfere with or hinder CONCESSIONAIRE's rights or operations under this CONTRACT.

Specifically, CONCESSIONAIRE shall provide for the sale of first quality golf and golf related equipment and merchandise, the rental and repair of golf equipment, provide a golf lesson service to individuals and groups, and provide full maintenance of the pro shop. CONCESSIONAIRE shall provide for the rental, retrieval and washing of golf balls for the driving range and provide full maintenance of the driving range. CONCESSIONAIRE shall collect all fees for CONCESSION services, maintain proper accounting records for the CONCESSION, pay for and obtain all licenses, permits and insurance necessary for the operations granted, and perform or supervise CONCESSIONAIRE employees in the performance of all other tasks related to the operations granted.

CONCESSIONAIRE shall also cooperate with and assist the CITY in the promotion of a junior golf program which may include providing without charge group lessons, range balls, and the sponsorship of junior tournaments; participate in the encouragement, organization and accommodation of golf tournaments and compatible events intended to increase play at the course and otherwise provide benefit to the golfing public; and cooperate with and encourage the growth of the men's and women's golf clubs associated with the Encino-Balboa Golf Course.

CONCESSIONAIRE may provide additional activities, services and/or amenities at the facility where the subject concession resides, provided they are compatible with other Department activities (see Proposal Form E) and approved

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by the Department. However, activities, services or amenities that are in direct competition or conflict with other existing CITY authorized concessions will not be allowed.

During any period of time that a professional golf tournament may be held at Encino-Balboa Golf Course, CONCESSIONAIRE's right to exercise the concession privileges licensed hereunder shall be limited as follows: CONCESSIONAIRE, upon request by tournament sponsor, shall surrender possession of the PREMISES (as hereinafter defined), excluding offices, to said sponsor. Compensation for said surrender shall be by separate contract between CONCESSIONAIRE and the tournament sponsor. CITY shall not invoke this CONTRACT condition for more than three tournaments in any operating year.

SEC. 4 PREMISES:

The premises (hereinafter referred to as PREMISES) to be authorized for use by CONCESSIONAIRE shall only include:

- Golf pro shop and accompanying storage space, two offices and an employee restroom.
- Driving range, range shop and two work/storage rooms.

CONCESSIONAIRE shall not use or permit the CONCESSION PREMISES to be used, in whole or in part, during the term of this CONTRACT, for any other purpose other than as hereinabove set forth except with the prior, written consent of BOARD, nor for any use in violation of any present or future laws, ordinances, rules and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY, relating to sanitation or the public health, safety or welfare or operations at and use of the CONCESSION PREMISES. CONCESSIONAIRE hereby expressly agrees at all times during the term of this CONTRACT, at its own cost, to maintain, use, and operate the CONCESSION PREMISES and all improvements and personalty thereon in a safe, clean, wholesome and sanitary condition, and in compliance with any and all present and future laws, ordinances and rules and regulations relating to public health, safety or welfare.

CITY undertakes and agrees to deliver to CONCESSIONAIRE the PREMISES specified herein and described in Exhibit C in as-is condition.

At any time during the term of this CONTRACT, BOARD may, by appropriate Resolution fully setting forth the reasons therefor, require the CONCESSIONAIRE to surrender any portion of the CONCESSION PREMISES. Should BOARD impose such a requirement on CONCESSIONAIRE, BOARD will use its best efforts to provide CONCESSIONAIRE with equivalent, substitute space, or in the alternative, provide an appropriate adjustment to the rentals due hereunder and compensate CONCESSIONAIRE for capital improvements constructed at its expense which have not been fully depreciated.

SEC. 5 TERM OF CONCESSION CONTRACT:

The term of this CONTRACT shall be for a period of ten (10) years commencing upon execution of this CONTRACT by the CITY and expiring at midnight ten (10) years from the date of execution.

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SEC. 6 RENTAL:

A. Payments

As consideration for CITY's granting the concession rights hereinabove set forth, CONCESSIONAIRE agrees to pay to CITY as consideration for the granting of CONCESSION, the greater of the following:

- Annual Minimum Rental Guarantee of

\$100,000 for the Golf Professional Shop/Lesson Service
\$375,000 for the Driving Range
- or the following rental percentage of

3 % of gross receipts from the Golf Professional Shop/Lesson Service
45 % of gross receipts from the Driving Range

B. Gross Receipts Defined

Except as otherwise provided, "gross receipts" as used in this CONTRACT shall mean and is defined as follows:

The total amount of the sale price of all sales, the total amount charged or received for the performance of any act, service or employment of whatever nature it may be, whether such service, act, or employment is done as a part of or in connection with the sale of goods, wares, merchandise or not, for which a charge is made or credit allowed, including all receipts, cash, credits, and property of any kind or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expenses whatsoever; provided, that cash discounts allowed or taken on sales shall not be included. But gross receipts shall not include:

1. The amount of any federal tax imposed on or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether or not the amount of federal tax is stated to customers as a separate charge, or any California state, city, or county sales or use tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, or such part of the sales price of any property previously sold and returned by the purchaser to the seller which is refunded by the seller by way of cash or credit allowances given or taken as part of payment on any property so accepted for resale;
2. Receipts from the sale of or the trade-in value of any furniture, trade fixtures or equipment used on the PREMISES, and owned by CONCESSIONAIRE;
3. The value of any merchandise, supplies or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;

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4. Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
5. The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;
6. The amounts of any discounts given to CONCESSIONAIRE's employees; and
7. Receipts from the sales of merchandise that are sold at wholesale, i.e., within two percent (2%) of cost to CONCESSIONAIRE, in order to move dated merchandise from inventory (such sales must be approved in advance by CITY).

CONCESSIONAIRE shall not be credited with nor allowed to have any reduction in the amount of the gross receipts, as herein defined, which results from any arrangements for a rebate, kickback or hidden credit given or allowed to any customer.

C. Method of Payment

The rental payment to be paid by CONCESSIONAIRE to CITY hereunder shall be payable in monthly installments during each year of the term of this CONTRACT. Within fifteen (15) days after the end of each calendar month, CONCESSIONAIRE shall pay CITY as the rental payment for such previous calendar month one-twelfth (1/12) of the Annual Minimum Rental Guarantee or eight percent (8%) of gross receipts from the Golf Professional Shop/Lesson Service and forty-five percent (45%) of gross receipts from the Golf Driving Range, respectively, received in said previous month, whichever sum is greater.

CONCESSIONAIRE shall transmit with its rental payment a Monthly Gross Receipts and Rent Report for the month for which the rent is submitted. The GENERAL MANAGER shall provide a form for this purpose, and the completed form shall include a statement of the Gross Receipts by source of sales, and such other information as the GENERAL MANAGER may properly require. The payment shall be addressed to:

City of Los Angeles
Department of Recreation and Parks
Valley Region - Administrative Services
6335 Woodley Avenue
Van Nuys, CA 91406

CONCESSIONAIRE shall also furnish to CITY, as specified in SEC. 15 Business Records, an annual audited statement of gross receipts and expenses for the CONCESSION.

D. Pro Rata Payment

If the execution or termination of this CONTRACT falls on any date other than the first or last day of any calendar month, the applicable rental payment for said month if it is based on the minimum rental, shall be paid by CONCESSIONAIRE to CITY pro rata in the same proportion that the number of days the CONTRACT is in effect for that month bears to the total number of days in that month.

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E. Late Payment Fee

Failure of CONCESSIONAIRE to pay any of the rental payments required herein on time is a breach of this CONTRACT for which CITY may terminate same or take such other legal action as it deems necessary. CITY expects all compensation to be paid on time and CONCESSIONAIRE agrees to pay on time.

Without waiving any rights available at law, in equity or under this CONTRACT, in the event of late or delinquent payments by CONCESSIONAIRE, the latter recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, CONCESSIONAIRE agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charges for late or delinquent payments shall be \$50.00 plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly on the balance of the unpaid amount. The postmarked date on the letter containing the rental statement and payment will be considered proof of late or delinquent payments.

F. Annual Accounting Adjustment

At the end of each twelve (12) month period during the term hereof, CONCESSIONAIRE shall prepare and submit to CITY a statement showing the total gross receipts for said twelve (12) month period and the rental paid for the said twelve months, and if the sums paid by CONCESSIONAIRE during said period exceed the minimum annual fees as well as the annual percentage charges computed as set forth in this Section, whichever is greater, such overpayment shall be credited to the rental payment thereafter due from CONCESSIONAIRE.

SEC. 7 ADDITIONAL FEES AND CHARGES:

If after 10 days written notice to CONCESSIONAIRE, CITY pays any sum or incurs any obligation or expense for which CONCESSIONAIRE has agreed to pay or reimburse CITY, or after similar notice if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants or agreements contained in this CONTRACT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants and agreements, CONCESSIONAIRE agrees to pay the sum so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same shall be added to any installment of the fees and charges thereafter due hereunder, and each and every part of the same shall be and become additional fees and charges, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic rent set forth in SEC. 6 hereof. If after 10 days written notice to CONCESSIONAIRE, CITY should elect to use its own operating and/or maintenance personnel in making any repairs, replacements and/or alterations due to failure of CONCESSIONAIRE to so perform, and to charge CONCESSIONAIRE with the cost of same, any statement of CITY showing the computation thereof and any time sheet of any employee of CITY showing hours of labor or work allocated to any such repair, replacement and/or alteration, or any stock requisition of CITY showing the issuance of materials for use in the performance thereof, shall be prima facie evidence against CONCESSIONAIRE that the amount of such charge was necessary and reasonable.

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SEC. 8 OPERATING RESPONSIBILITIES:

A. Cleanliness

CONCESSIONAIRE shall keep the PREMISES and the surrounding area clean, uncluttered, and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted to remain thereon, and CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES. CONCESSIONAIRE shall furnish all equipment and materials necessary therefor, including trash receptacles of a size, type and number approved by CITY for use by the public. It shall empty trash receptacles into the trash storage area as often as necessary. CITY, however, shall collect and dispose of contents of the trash storage area.

B. Conduct

CONCESSIONAIRE and its representatives, agents, servants, and employees shall at all times conduct its business in a professional and orderly manner to the reasonable satisfaction of the GENERAL MANAGER.

C. Disorderly Persons

CONCESSIONAIRE shall use its best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon the aid of Park Rangers or other peace officers to assist in maintaining peaceful conditions as may be necessary. It shall not knowingly permit the use or possession of narcotics on the PREMISES, and shall promptly notify the authorities should it find persons doing so.

D. Personnel

CONCESSIONAIRE shall keep on file certificates on each employee indicating freedom from communicable tuberculosis as required by Section §163 of the Public Resources Code.

CONCESSIONAIRE shall, in the operation of the services under this CONTRACT, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the DEPARTMENT. All such personnel, while on or about the PREMISES, shall be clean, neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification, in such instances as are appropriate. No personnel employed by CONCESSIONAIRE, while on or about the PREMISES, shall use improper language, act in a loud, boisterous or otherwise improper way or be permitted to solicit business in an inappropriate manner. In the event an employee is not satisfactory, as herein defined, the GENERAL MANAGER may direct CONCESSIONAIRE to remove employee from the PREMISES within a reasonable time after written notice is received by CONCESSIONAIRE.

CONCESSIONAIRE shall select and appoint a CONCESSION MANAGER with whom the GENERAL MANAGER may deal on a daily basis regarding the CONCESSION. The CONCESSION MANAGER shall meet the experience requirements set forth in the Request for Proposal (RFP), attached as Exhibit A, and shall be subject to the approval of the GENERAL MANAGER.

The CONCESSION MANAGER shall devote, as necessary to fully comply with the terms and conditions of this CONTRACT, his or her time and attention to the operation of the CONCESSION and shall promote, increase and develop the business and render every possible service and convenience to the public. The

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CONCESSION MANAGER shall be fully acquainted with CONCESSIONAIRE's operations and CONTRACT obligations and shall be authorized by CONCESSIONAIRE to act in its behalf and fulfill its obligations in the day-to-day operation of the CONCESSION. During the days and hours established for the operation of CONCESSION, the CONCESSION MANAGER's personal attention shall not be directed toward the operation of any other business activity.

If for reason of ill health, incapacity or death, the CONCESSION MANAGER becomes incapable of performing his or her duties under the CONTRACT, CONCESSIONAIRE shall forthwith provide a qualified substitute or replacement manager acceptable to CITY. If CONCESSIONAIRE fails to forthwith provide a substitute CONCESSION manager, CITY may suspend this CONTRACT until such time as a manager acceptable to CITY is provided.

E. Merchandise

CONCESSIONAIRE shall provide and maintain an inventory of a wide range of brand name golf clubs, shoes, bags, balls, tees, clothing and accessories, including first line merchandise with an average retail value of at least \$350,000.

All merchandise, including, but not limited to, sporting goods, garments, footwear, etc. sold or kept for sale by CONCESSIONAIRE shall be of quality acceptable to industry standards and conform to all federal, state, and municipal laws, ordinances, and regulations in every respect. All merchandise kept for sale or rented by the CONCESSIONAIRE shall be kept subject to the approval or rejection of the GENERAL MANAGER, which approval shall not be unreasonably withheld. Rejected merchandise shall be removed from the PREMISES and not offered for sale or rent by CONCESSIONAIRE. The GENERAL MANAGER may order the improvement of the quality of any merchandise kept or offered for sale.

F. Prices

The rates and fees charged for golf lessons and driving range balls, and any changes thereto, shall be approved in advance by the CITY. Each year requests for changes to said rates shall be submitted in writing by CONCESSIONAIRE postmarked no later than March 1 or September 1. Evaluation of requests for changes to said rates shall include consideration of the rates and fees charged for comparable services provided at similar and/or competing establishments. The CITY may meet and confer with CONCESSIONAIRE regarding such matters but CITY's determination as to same shall be conclusive.

With the exception of golf lesson rates and driving range ball prices, CITY agrees that CONCESSIONAIRE's merchandise and services, including its schedule of prices, charges and rates for same, shall be within CONCESSIONAIRE's discretion. This discretion, however, is subject to approval by the GENERAL MANAGER who shall have the power to disapprove same if, in the opinion of the GENERAL MANAGER, the selection of items offered is inadequate or inappropriate for this CONCESSION or if any of said prices are excessive. The prices to be charged for merchandise and services shall be comparable to prices charged in similar and/or competing establishments. The GENERAL MANAGER shall meet and confer with CONCESSIONAIRE regarding such matters but GENERAL MANAGER'S determination as to same shall be conclusive.

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CONCESSIONAIRE's pricing schedule shall be reflective of current market value and shall be subject to approval by the CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS.

The prices of all merchandise shall be clearly marked and posted in full public view. Upon request, CONCESSIONAIRE shall provide GENERAL MANAGER with a list of rates and fees for all merchandise and services.

G. Hours/Days of Operation

The CONCESSIONAIRE shall keep the Golf Pro Shop and Driving Range open during all daylight hours every day, except December 25th, weather permitting. In addition, the Driving Range shall remain open at least until 10:00 p.m. every night, except December 25th, weather permitting and in CONCESSIONAIRE's discretion as late as is permitted by CITY's Municipal Code. Golf Lesson Service shall be available during all daylight hours and until 10:00 p.m. every night, except December 25th, weather permitting. Any deviation from the hours specified shall be subject to the prior approval of the GENERAL MANAGER of the DEPARTMENT. Additional hours of business, during the normal golf course hours, shall be at CONCESSIONAIRE'S discretion.

CONCESSIONAIRE shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it under this CONTRACT.

H. Equipment and Furnishings

CONCESSIONAIRE shall provide and install at its own expense all equipment, furnishings, and materials necessary to operations licensed, including, but not limited to: display fixtures, display racks, sales counter, benches, office furniture, office equipment, signage, fitting system, safe, trash cans, televisions, and point of sale equipment.

All equipment and furnishings required for CONCESSION shall be purchased, installed and maintained and all expendables shall be purchased by CONCESSIONAIRE at its expense and shall remain its personal property. Upon expiration or sooner termination of the CONTRACT, CONCESSIONAIRE has the right to remove its equipment and furnishings, excluding improvements, from the PREMISES and shall be allowed a period of thirty (30) days to make such removal; and if not removed within that period, equipment, furnishings and expendables shall be and become the property of CITY.

I. Maintenance of Equipment and Premises

CONCESSIONAIRE shall provide all maintenance, repair, replacement, and service required on all equipment and furnishings used in the CONCESSION and keep such equipment in good repair and in a clean and orderly condition and appearance. To accomplish this requirement, CONCESSIONAIRE shall establish an adequate preventive maintenance program and the provisions of same shall be subject to periodic review by CITY's representatives. Insofar as sanitation and appearance of the PREMISES is involved, the GENERAL MANAGER may direct CONCESSIONAIRE to perform necessary repairs and maintenance. The cost of repairing the heating and air conditioning equipment serving the CONCESSION PREMISES shall be assumed by the CONCESSIONAIRE.

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CONCESSIONAIRE shall be responsible for maintenance and repair of all interior areas and surfaces of the PREMISES and other areas under the control of the CONCESSIONAIRE. Common passageways leading to other CONCESSION facilities or offices maintained by CITY which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this section. CONCESSIONAIRE's duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the PREMISES in a safe, clean, wholesome, sanitary, orderly, and attractive condition. CONCESSIONAIRE shall also be responsible for routine maintenance of flooring (all types), electrical fixtures, mechanical and plumbing fixtures in the interior of PREMISES, such as light fixtures, concession employee toilets and faucets. All maintenance and repair work shall be performed by licensed craft personnel and shall meet all building codes as well as the standards of the DEPARTMENT.

CONCESSIONAIRE shall flush all sink drains with hot water at least once each week. Floor sweepings, grease or debris of any sort shall not be directed down floor sinks. Caustic drain cleaners shall not be used. CITY will remove drain blockages; however, if in the opinion of the GENERAL MANAGER, said blockage was caused by CONCESSIONAIRE's failure to observe the above regulations, the GENERAL MANAGER may perform such work as it deems necessary to cure said default and charge CONCESSIONAIRE for the full cost of labor and materials expended, plus 30 percent (30%) of said costs for administrative overhead.

CITY shall maintain the exterior of the PREMISES and will endeavor to perform all exterior repairs occasioned by normal wear and tear, graffiti, and the elements.

CONCESSIONAIRE shall be responsible for all damages to the PREMISES (interior and exterior) that result from vandalism (except for graffiti) or from attempted (or actual) burglary or robbery of their CONCESSION operation. CONCESSIONAIRE shall be responsible for all damages and maintenance associated with all CONCESSION activities and events that take place outside the PREMISES described herein.

CONCESSIONAIRE shall be responsible for maintenance and repair of the Driving Range, including but not limited to the turf, landscaping, irrigation systems (including pipes, sprinkler heads, valves, and timers), light fixtures (including light bulbs), tee mats, baffles, barriers, brushes, distance markers, fencing, and the sunshade structure.

J. Permits and Licenses

CONCESSIONAIRE shall obtain at its sole expense any and all permits, approvals, and licenses that may be required in connection with the operation of the concession including, but not limited to: tax permits, business licenses, health permits, police, fire and Building and Safety permits.

K. Signs and Advertisements

No signs of any kind shall be displayed unless approved by the GENERAL MANAGER, who may require the removal or refurbishment of any sign previously approved. CONCESSIONAIRE shall not permit vendors to display wares inside or outside the building or on said property unless written permission is secured from the GENERAL MANAGER, and such permission shall be subject to revocation at any time. All advertising on PREMISES is subject to approval by UNITED STATES ARMY, CORPS OF ENGINEERS.

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L. Taxes

CONCESSIONAIRE shall pay all taxes of whatever character which may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE's improvements, fixtures, equipment or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing this CONTRACT and accepting the benefits thereof, a property interest will be created known as a "possessory interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party in whom the possessory interest is vested, will be subject to the payment of the property taxes levied upon such interest. For specific information regarding the possessory interest tax, please contact the Los Angeles County Assessor's Office, Possessory Interest Section, at (213) 974-1589.

Pursuant to Section 21.3.3 of Article 1.3 of the Los Angeles Municipal Code Commercial Tenants Occupancy Tax, CONCESSIONAIRE must pay to CITY for the privilege of occupancy an excise tax at the rate of \$1.48 per calendar quarter or fractional part thereof for the first \$1,000 or less of charges (rent) attributable to said calendar quarter, plus \$1.48 per calendar quarter for each additional \$1,000 of charges or fractional part thereof in excess of \$1,000. Said tax shall be paid quarterly to the DEPARTMENT to its address set forth in SEC. 6.

M. Utilities

CONCESSIONAIRE will be responsible for all utility charges associated with the operation of the CONCESSION. CONCESSIONAIRE shall remit a monthly utility fee of \$2,000. The CITY reserves the right to adjust utility fees annually, based on prior years' usage. If the CONCESSIONAIRE desires to install a separate utility meter for their CONCESSION and be billed directly from the utility service provider instead of paying the CITY's utility fee, CONCESSIONAIRE will assume full responsibility, financial and otherwise, for the separate meter and must first obtain prior written approval from the CITY. CONCESSIONAIRE shall pay for the telephone service. The telephone number shall be placed in the facility's name and shall not be transferable to any other location.

In all instances where damage to any utility service line is caused by CONCESSIONAIRE, its employees, contractors, suppliers, agents or invitees, CONCESSIONAIRE shall be responsible for the cost of all repairs.

N. Safety

CONCESSIONAIRE shall correct violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall ensure that the injured person receives prompt medical attention as soon as possible thereafter. CONCESSIONAIRE shall keep internal documentation of the incident and provide GENERAL MANAGER with such information upon request. In instances when outside medical attention is administered, CONCESSIONAIRE shall submit to the DEPARTMENT a CITY Form General No. 87 "Non-Employee Accident or Illness Report." Two copies of all Accident/Incident reports shall be sent to:

City of Los Angeles
Department of Recreation and Parks
Valley Region - Administrative Services
6335 Woodley Avenue
Van Nuys, CA 91406

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ON

improvements:

Cost	Time to Complete
\$250,000	5 weeks
\$300,000	3 weeks
\$50,000	2 weeks
\$40,000	3 weeks
\$800,000	6 weeks
\$30,000	2 weeks
\$200,000	6 weeks

ovement that is deemed appropriate.
CITY and the UNITED STATES
made at the sole expense of the
ecific requirements including but not
IONAIRE shall be fully responsible
uirements.

epairs shall be no less than \$1,670,000
supervision costs and fees. The

ly to serve as a guideline. Total
ges in the estimated cost figures in
plus or minus ten percent (10%)

red from the date all necessary
orce majeure events, including
rovements are performed. Subject to
of the improvements within the

If after reasonable notice, CONCESSIONAIRE fails to correct hazardous conditions which have led or, in the reasonable opinion of the GENERAL MANAGER, could lead to injury, the GENERAL MANAGER may at its option, and in addition to all other remedies (including termination of this CONTRACT) which may be available to it, take the necessary action to remedy that condition and recover the cost thereof, including administrative overhead, to be paid by CONCESSIONAIRE to CITY as set forth in SEC. 7.

All overhead shelving shall include anchoring devices to prevent toppling or spillage of shelved items in the event of seismic activity.

The CONCESSION is subject to closure by the UNITED STATES ARMY, CORPS OF ENGINEERS for public health and safety violations. This CONTRACT is subject to UNITED STATES ARMY, CORPS OF ENGINEERS Safety and Health Requirements Manual attached hereto as Exhibit G.

O. Security

CONCESSIONAIRE shall be responsible for the security of the interior PREMISES. CONCESSIONAIRE may install equipment, approved by the CITY, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by CONCESSIONAIRE.

P. Golf Organizations

CONCESSIONAIRE shall be prohibited from marketing any Golf Organizations except the CITY's Men's and Women's Golf Organizations which are the DEPARTMENT's recognized affiliates without prior approval of the BOARD.

SEC. 9. QUIET ENJOYMENT:

CITY agrees that CONCESSIONAIRE, upon payment of the fees and charges specified herein, and all other charges and payments to be paid by CONCESSIONAIRE under the terms of this CONTRACT, and observing and keeping the conditions and covenants of this CONTRACT on its part to be observed and kept, shall lawfully and quietly hold, use and enjoy the PREMISES during the term of this CONTRACT.

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SEC. 10 CAPITAL INVESTMENT PROGRAM:

The CONCESSIONAIRE is required to make to the satisfaction of CITY the following improvements:

Site	Required Improvement	Cost ¹	Time to Complete ²
Driving Range	Provide fencing on both sides and the back of the Driving Range using at least 100 foot high steel poles and netting.	\$250,000	5 weeks
	Install synthetic turf on the entire ball landing area from the concrete tee line to all perimeter fences, and provide target greens.	\$300,000	3 weeks
	Lighting improvement.	\$50,000	2 weeks
	Short game area (chipping and bunker practice area).	\$40,000	3 weeks
	Construct double-deck 80 stall tee structure (demo existing tee line).	\$800,000	6 weeks
Pro Shop and Range Shop	General refurbishment including new carpeting, wall covering, painting, display fixtures and other cosmetic improvements.	\$30,000	2 weeks
Pro Shop	Pro Shop Extension (2,000 square feet).	\$200,000	6 weeks

The CONCESSIONAIRE may offer any other construction, modification or improvement that is deemed appropriate. All proposed improvements shall be subject to the prior written approval of the CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS. All proposed improvements shall be made at the sole expense of the CONCESSIONAIRE. CONCESSIONAIRE shall comply with any and all site specific requirements including but not limited to environmental, cultural, and historical requirements. The CONCESSIONAIRE shall be fully responsible for all expenses incurred in complying with any and all applicable laws and requirements.

Except as provided below, the cost of required and proposed refurbishment and repairs shall be no less than \$1,670,000 exclusive of equipment, design, planning, architectural, consulting, and supervision costs and fees. The

¹ The cost figures in this column are estimates, and intended only to serve as a guideline. Total capital expenditures shall not be less than \$1,670,000. Changes in the estimated cost figures in this column for each category of improvement of greater than plus or minus ten percent (10%) shall be approved in advance by CITY.

² The time to complete set forth in this column shall be measured from the date all necessary licenses, approvals and permits are received and subject to force majeure events, including weather conditions associated with the time of year the improvements are performed. Subject to the foregoing, CONCESSIONAIRE guarantees completion of the improvements within the amount of time indicated.

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CONCESSIONAIRE shall submit full documentation of the cost of implementing required and proposed improvements. If said improvements cost less than \$1,670,000, the remaining amounts must be invested in improvements to the CONCESSION facilities as approved in writing by the GENERAL MANAGER.

Prior to the construction and installation of any CONCESSION improvements and no more than 30-days after execution of the CONTRACT by the parties, CONCESSIONAIRE shall submit an overall program consistent with proposal time line, including a time schedule, for same which shall be subject to the approval of GENERAL MANAGER and upon approval CONCESSIONAIRE shall, as applicable, and at its sole cost and expense, employ competent architects, engineers and interior decorators, as required, who will prepare detailed plans, specifications, interior design and decorations and cost estimates of all CONCESSION improvements, decor, and equipment to be installed in the CONCESSION areas. The detailed plans, specifications, equipment, interior design and decor and cost estimates shall be submitted to GENERAL MANAGER for written approval no more than 90-days after CONCESSIONAIRE receives approval of the overall program by the GENERAL MANAGER. CONCESSIONAIRE shall not award or let any contract for the construction of said CONCESSION improvements, enter into any contracts for the purchase of any equipment to be installed in the CONCESSION areas or enter into any contracts for the installation of the interior decor and design therefor until the detailed plans and specifications have been approved in writing by the GENERAL MANAGER.

GENERAL MANAGER shall, within sixty (60) days of receipt of any such plans and specifications, either approve or disapprove the same. Approval by GENERAL MANAGER shall extend to and include architectural and aesthetic matters and GENERAL MANAGER reserves the right to reject any such data submitted and to require CONCESSIONAIRE to resubmit design and layout proposals until they meet with GENERAL MANAGER's approval. One (1) copy of plans for all improvements or subsequent changes therein or alterations thereof shall, within fifteen (15) days after approval by GENERAL MANAGER, be signed by a representative of CONCESSIONAIRE and deposited with CITY.

Upon approval by GENERAL MANAGER of the detailed plans, specifications, equipment, cost estimates and the interior design and decor of the CONCESSION improvements, CONCESSIONAIRE shall forthwith cause the work called for as approved by said GENERAL MANAGER to be forthwith commenced and completed with reasonable dispatch. No change, addition or alteration shall be made in the scope of the work so approved without first obtaining GENERAL MANAGER'S approval in writing.

Upon completion of the CONCESSION improvements, CONCESSIONAIRE shall, within a reasonable time thereafter, furnish CITY, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all laws, rules, ordinances and governmental rules, regulations and orders; (2) two complete, reproducible sets of as-built drawings covering the structural and other improvements installed by CONCESSIONAIRE in the concession areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air conditioning ducts and related matters. CONCESSIONAIRE shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made by CONCESSIONAIRE; and (3) duplicated receipted invoices on all materials and labor costs incurred in the installation of the foregoing structural and equipment items, including counters, partitions and furnishings, and the interior design and decor which CONCESSIONAIRE enters on its records as representing its capital expenditures in the CONCESSION areas.

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All structural or other improvements, equipment and interior design and decor constructed or installed by CONCESSIONAIRE, including the plans and specifications therefor, shall in all respects conform to and comply with the applicable statutes, ordinances, building codes, rules and regulations of CITY and such other authorities as may have jurisdiction over the CONCESSION areas or CONCESSIONAIRE's operations therein. The approval by GENERAL MANAGER as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefor shall at all times remain with CONCESSIONAIRE. CONCESSIONAIRE, at its sole cost and expense, shall also procure all building, fire, safety and other permits necessary for the construction of the structural and other improvements, installation of the equipment and the interior design and decor.

CONCESSIONAIRE shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, and submit to CITY evidence of required insurance coverage (see Exhibit D).

CONCESSIONAIRE may be required to reimburse the DEPARTMENT for the employment of environmental consultants to provide any environmental assessment which may be required by Federal (National Environmental Policy Act) or State (California Environmental Quality Act) regulations to build the improvements proposed. All required environmental documents and processing must be completed before the proposed project or improvements are submitted to the GENERAL MANAGER for approval. CONCESSIONAIRE will be responsible for any mitigation requirements resulting from the types of uses proposed.

CONCESSIONAIRE or its contractor shall provide a construction bond to secure payment of labor, material, equipment and supplies, in an amount to equal the value of the labor and materials, and a construction bond to secure the performance of the contractor(s), in an amount equal to one hundred percent (100%) of the contract price. The form of said bonds shall be such that the CITY may proceed against CONCESSIONAIRE, the contractor(s), and their sureties on the bonds immediately upon any default in the orderly completion of the work or in payments for labor, material, equipment and supplies without waiting for the completion of the work and the accumulation of damages.

All construction work done, equipment supplied and installed and interior design and decor furnished by CONCESSIONAIRE pursuant to SEC. 10 shall be at its sole cost and expense, free and clear of liens for labor and material and CONCESSIONAIRE shall hold CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS harmless from any liability in respect thereto. The GENERAL MANAGER may require CONCESSIONAIRE to require its contractor(s) to post a contractor's and payment bond in an amount and form as specified by the GENERAL MANAGER. After completion of the structural or other improvements and installation of equipment and interior design and decor, as above provided, CONCESSIONAIRE shall not make any structural alterations to the ceilings, walls or floors of any permanent improvements which it constructs or installs in the CONCESSION areas without first obtaining GENERAL MANAGER's written consent; provided, however, that CONCESSIONAIRE may make nonstructural alterations which the exigencies of the operation of its CONCESSION demand in order to promote efficiency in the operation thereof.

SEC. 11 PROHIBITED ACTS:

CONCESSIONAIRE shall not:

1. Do or permit anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the PREMISES or in any of the areas controlled by the

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CITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES, or hinder police, firefighters or other emergency personnel in the discharge of their duties;

2. Interfere with the public's enjoyment and use of PREMISES or surrounding public property for the purpose for which they were intended. It shall not use the PREMISES for any purpose which is not essential to the CONCESSION operations;
3. Divert or cause to be diverted any business from the PREMISES where CONCESSIONAIRE profits from such diversion;
4. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than its own equipment, without the written consent of the GENERAL MANAGER;
5. Overload any floor in the PREMISES;
6. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of this CONTRACT, to surrender to GENERAL MANAGER any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by GENERAL MANAGER, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
7. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any fire insurance policy required under this CONTRACT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this CONTRACT. If, by reason of any failure on the part of CONCESSIONAIRE after receipt of notice in writing from CITY to comply with the provisions of this paragraph, any fire insurance rate on the PREMISES, or any part thereof, or on the buildings in which the same are located, shall at any time be higher than it normally would be, then CONCESSIONAIRE shall pay CITY, on demand, that part of all fire insurance premiums paid by CITY which have been charged because of such violation or failure of CONCESSIONAIRE; provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
8. Allow any sale by auction upon the PREMISES;
9. Permit loitering on or about the PREMISES;
10. Allow the sale, service, or consumption of alcoholic beverages of any kind without the prior written approval of the GENERAL MANAGER and the UNITED STATES ARMY, CORPS OF ENGINEERS;

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11. Use the PREMISES, or any part thereof, for lodging or sleeping purposes or in any manner that will constitute waste;
12. Use or allow the PREMISES to be used for any improper, immoral, unlawful or objectionable purposes;
13. Install or allow the installation of vending machines including but not limited to Automated Teller Machines (ATM's) without the prior written approval of the GENERAL MANAGER and the UNITED STATES ARMY, CORPS OF ENGINEERS; or
14. Permit gambling on the PREMISES or install or operate or permit to be installed or operated thereon, any device which is illegal; or use the PREMISES or permit it to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the PREMISES any activity which would constitute a nuisance.

SEC. 12 LIABILITY:

A. Indemnification

Except for the active negligence or willful misconduct of CITY or the UNITED STATES ARMY, CORPS OF ENGINEERS, CONCESSIONAIRE undertakes and agrees to defend, indemnify and hold harmless CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS and its officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONCESSIONAIRE's employees and agents, or damage or destruction of property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, or omissions, or willful misconduct incident to the performance of this CONTRACT by the CONCESSIONAIRE, its officers, agents, employees, or its sub-contractor of any tier.

B. Insurance

1. General Conditions

During the term of this CONTRACT and without limiting CONCESSIONAIRE's indemnification of CITY, CONCESSIONAIRE shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by CONCESSIONAIRE but not less than the amounts and types listed on Form Gen 146/IR in Exhibit D hereto covering its operations hereunder subject to the following conditions as they may variously apply:

a. Additional Insured/Additional Interest/Loss Payee

The CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS, their Officers, Agents and Employees shall be included as:

Additional Insureds in all required General Liability and Additional Interests in all required Automobile Liability insurance.

Named Insured in a required Owners and Contractors Protective Liability insurance.

Loss Payee as their interests may appear in a required property, fidelity or surety coverages. In the event any loss, damage or casualty to the improvements described in Sec. 10 which is

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covered by one or more of the types of insurance described in Exhibit D, any proceeds of insurance shall be used for repair and reconstruction of the covered improvements, unless CITY elects otherwise. Should CITY elect not to repair or reconstruct, any proceeds of insurance shall be payable to and divided between CITY and CONCESSIONAIRE in a manner as to allow CONCESSIONAIRE to recover its investment in the improvements, amortized on a straight line basis over the ten- (10) year life of this CONTRACT.

The CITY need not be named on Workers' Compensation/ Employer's Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Garage Keeper's Legal).

b. Insurance Approval

All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy. Evidence of insurance must be submitted to the DEPARTMENT's Risk Control Coordinator and approved by the City Attorney prior to commencement of any work or tenancy under this CONTRACT in accordance with Los Angeles Administrative Code Sections 11.47 through 11.56.

c. Alternative Programs

Alternative Risk Financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers and captive insurance programs are subject to review of their financial statements by CITY before approval can be granted by the City Attorney.

d. Admitted Carrier/Licensed California Broker

Insurance shall be obtained from brokers or carriers authorized to transact insurance business in California. Surplus lines insurance from carriers who are not admitted in California must be submitted through a California-licensed broker or agency.

Surplus lines coverage must also contain a Service of Suit provision whereby the underwriters will submit as necessary to any court of competent jurisdiction in California and agree that all matters arising thereunder will be determined in accordance with the law and practice of such court. It must further give the name and address of the underwriter's agent for service of process located within California or must nominate the California Insurance Commissioner as such agent.

e. Priority of Coverage

CONCESSIONAIRE's insurance shall not call on CITY's program for contributions.

f. Cancellation/Reduction in Coverage Notice

With respect to the interests of CITY, if an insurance company elects to cancel insurance before the stated expiration date, or declines to renew in the case of a continuous policy, or materially reduces the coverage period by changing the retroactive date (if any), or the extended discovery period (if any), or reduces the stated limits other than by impairment of an aggregate limit, or materially reduces the scope of coverage which affects CITY's interest,

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the company will provide CITY at least thirty (30) days prior written notice of such election. Notice will be made by receipted delivery addressed as follows: CITY ATTORNEY, INSURANCE AND BONDS, 1800 CITY HALL EAST, 200 N. MAIN STREET, LOS ANGELES, CA 90012-4168. It is understood, however, that such notice to CITY shall not affect the company's right to give a lesser notice to the Named Insured in the event of nonpayment of premium. (L.A. Administrative Code Section 11.34).

g. Acceptable Evidence

The appropriate CITY Special Endorsement forms, attached hereto as **Exhibit D**, are the preferred form of evidence of insurance. Alternatively, CONCESSIONAIRE may submit two (2) certified copies of the policy or other evidence acceptable to the City Attorney containing language which complies with subparagraphs a. through f. above.

With respect to Professional Liability Insurance, either a signed copy of the policy Declarations Page or a letter from CONCESSIONAIRE's insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of CITY as specified in subparagraph f. will satisfy this requirement.

h. Separation of Insureds

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom a claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

i. Renewal

Once the insurance has been approved by CITY, evidence of renewal of an expiring policy may be submitted on a manually signed renewal endorsement or certificate form. If the policy or the carrier has changed, however, new evidence as specified in paragraph a. through h. above must be submitted.

2. Aggregate Limits/Reduction in Coverage

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of CONCESSIONAIRE not related to this CONTRACT, CONCESSIONAIRE shall give CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in CONCESSIONAIRE's best judgement may diminish the protection such insurance affords CITY. Further, CONCESSIONAIRE shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. CITY may, at its option, specify a minimum acceptable aggregate for each line of coverage required.

CONCESSIONAIRE shall not make any substantial reduction in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) which may affect CITY's protection without CITY's prior written consent.

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3. Self-Insurance and Self-Insured Retentions

Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by CITY upon review of evidence of CONCESSIONAIRE's financial capacity to respond. Additionally, such programs or retentions must provide CITY with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance.

4. Modification of Coverage

CITY reserves the right at any time during the term of this CONTRACT to change the amounts and types of insurance required hereunder by giving CONCESSIONAIRE ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to CONCESSIONAIRE, the CITY agrees to negotiate compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by CITY. Non-availability or non-affordability must be documented by a letter from CONCESSIONAIRE's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, CONCESSIONAIRE's failure to procure and maintain required insurance or a self-insurance program during the entire term of this CONTRACT shall constitute a material breach of this CONTRACT under which CITY may immediately suspend or terminate this CONTRACT or, at its discretion, procure or renew such insurance to protect CITY's interests and pay any and all premiums in connection therewith and recover all monies so paid from CONCESSIONAIRE.

6. Underlying Insurance

CONCESSIONAIRE shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance, consultants, agents and subcontractors, if any, to protect CONCESSIONAIRE's and CITY's interests, and for ensuring that such persons comply with any applicable insurance statutes. CONCESSIONAIRE is encouraged to seek professional advice in this regard.

C. Workers' Compensation

By signing this CONTRACT, CONCESSIONAIRE hereby certifies that it is aware of the provisions of Section 3700 et seq., of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions throughout its performance of the work pursuant to this CONTRACT.

A waiver of Subrogation in favor of CITY will be required when work is performed on CITY premises under hazardous conditions.

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SEC. 13 PERFORMANCE BOND:

CONCESSIONAIRE shall provide a Performance Bond upon execution of this CONTRACT by CITY. The Performance Bond must meet all the following requirements:

A. Amount of Bond

In the amount of \$168,750.

B. Form of Bond

The term "Performance Bond" does not mean that only a formal bond from a bonding company is acceptable. Any of the following instruments are acceptable if they meet the requirements spelled out in this Section. CONCESSIONAIRE's bond shall be in any one of the following forms but may not be a combination of two or more types:

1. A cash deposit made at the Cashier's window of the DEPARTMENT.
2. A cashier's check drawn on any bank that is a member of the Los Angeles Clearing House Association, which cashier's check is payable to the order of CITY.
3. A check drawn on and certified by any bank that is a member of the Los Angeles Clearing House Association, payable to the order of CITY.
4. A certificate of time deposit in a bank that is a member of the Los Angeles Clearing House Association, payable to the order of CITY.
5. A corporate surety bond of a surety company satisfactory to the GENERAL MANAGER.

CONCESSIONAIRE should note that the use of a certificate of time deposit as bond allows it to collect interest on capital held by CITY. Interest shall not be accumulated on CONCESSIONAIRE's capital otherwise.

In the event CONCESSIONAIRE has placed a corporate surety bond and defaults in the performance of any of the terms of the CONTRACT, the sum guaranteed by said bond shall be available to reimburse CITY for any damages and costs, as determined by the GENERAL MANAGER, occasioned by reason of said default. The form of said bond shall be such that CITY may proceed against CONCESSIONAIRE and its surety immediately upon any default in the performance of the CONTRACT.

C. Agreement of Deposit and Indemnity

The above instruments must be accompanied by an agreement of deposit and indemnity, approved as to form and legality by the City Attorney, wherein CONCESSIONAIRE unconditionally agrees that in the event of any default, CITY shall have full power and authority to use the deposit in whole or in part to indemnify CITY. Every deposit of securities or certificates of time deposit must be accompanied by express authority for the GENERAL MANAGER to convert same into cash and to deposit said cash in the Treasury of the CITY in the manner governing deposit of cash in City Treasury by the Charter of the CITY. All deposits of cash or checks must be immediately so deposited by the DEPARTMENT.

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D. Maintenance of Deposit

Said bond shall be held by CITY during the entire term of the CONTRACT. If the surety, in the reasonable opinion of the GENERAL MANAGER, becomes irresponsible, CONCESSIONAIRE shall be required to replace the surety within ten (10) days after written notice thereof has been mailed by the DEPARTMENT to CONCESSIONAIRE.

If the redemption proceeds are not sufficient, CONCESSIONAIRE shall deposit cash with the DEPARTMENT in an amount sufficient to make up the difference within ten (10) days of mailing of notice of deficiency by the DEPARTMENT.

The surety on said Bond shall, by appropriate notation thereon, stipulate and agree that no change, extension of time, alteration or addition to the terms of this CONTRACT or to the work to be performed hereunder, shall in any way affect its obligation under said Bond, and shall consent to waive notice of any such matters.

SEC. 14 ASSIGNMENT, SUBLEASE, BANKRUPTCY:

CONCESSIONAIRE shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign said CONTRACT nor transfer, assign or in any manner convey any of the rights or privileges therein granted without prior written approval of both CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS. Neither the CONTRACT nor the rights therein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to this CONTRACT or right of use of the whole or any portion of the PREMISES upon any such assignee, mortgagee, encumbrancer, pledgee or other lienholder, successor or purchaser.

SEC. 15 BUSINESS RECORDS:

CONCESSIONAIRE shall maintain during the term of this CONTRACT, permanent books, ledgers, journals and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to this CONTRACT. Such books, ledgers, journals, accounts and records shall be available for audit, inspection and examination by CITY, its officers and employees, or a duly authorized representative, during ordinary business hours on the CONCESSION PREMISES.

CONCESSIONAIRE shall be required to maintain a method of accounting of all the receipts and disbursements in connection with the CONCESSION which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE from the operation of each separate CONCESSION. The method of accounting, including bank accounts, established for the CONCESSION shall be separate from the accounting systems used for any other business operated by CONCESSIONAIRE or for recording CONCESSIONAIRE's personal financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.

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3. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
4. Cash register tapes shall be retained so that day-to-day sales can be identified.
5. Any other accounting records that CITY, in its sole discretion, deems necessary for proper reporting of receipts.
6. The CONCESSIONAIRE must post a sign measuring at least 5" by 9", clearly visible to the public at each location, stating:

"If we fail to give you a receipt, you are entitled to a refund of up to \$5.00. If this policy is not followed, please report it by calling (818) 756-8186."

CONCESSIONAIRE shall install and provide at its own expense a cash register/cash management system on which it shall record all sales. The cash register/cash management system must generate receipts that can be issued to customers, be equipped with journal tapes that provide a cumulative total of gross receipts from the inception of the business, meet industry accepted standards, and provide necessary management reports and management security. CONCESSIONAIRE shall not purchase or install the cash register/cash management system before obtaining the GENERAL MANAGER's written approval of the specific system to be purchased and installed. Cash registers/cash management systems shall have price displays which are visible to the public.

CONCESSIONAIRE shall obtain and install (a) non-resettable ball dispensing machine(s) that accurately displays and records the number of balls dispensed and sold. This information shall agree with CONCESSIONAIRE's gross receipts reports and other appropriate accounting records at all times.

All documents, books and accounting records shall be retained for a minimum of five (5) years and be open for inspection and re-inspection on the CONCESSION PREMISES at any reasonable time during the term of the CONTRACT and for a reasonable period, not to exceed five (5) years, thereafter. In addition, CITY may from time to time conduct an audit and re-audit of the books and business conducted by CONCESSIONAIRE and observe the operation of business so that accuracy of the above records can be confirmed. If the report of gross sales made by CONCESSIONAIRE to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, CONCESSIONAIRE shall pay CITY any additional rentals disclosed by such audit. If any discrepancy exceeds two percent (2%) and no reasonable explanation is given for such discrepancy, CONCESSIONAIRE shall also pay the cost of the audit.

CONCESSIONAIRE shall transmit a certified financial Profit and Loss Statement for the CONCESSION operations, prepared in a form and by a Certified Public Accounting firm acceptable to the GENERAL MANAGER, on or before April 30 of each year for the previous calendar year during the term of the CONTRACT. The Profit and Loss Statement shall set forth an expense account entitled "Compensation to Officers" or an account having some similar title. The amount shown opposite this item shall include all salaries or other compensation for services derived from the CONCESSION operations by CONCESSIONAIRE, officers of the CONCESSIONAIRE's corporation, directors, shareholders, any individual owning stock indirectly and other persons employed by CONCESSIONAIRE to manage the operations or supervise CONCESSIONAIRE's employees and members of their respective families. These salaries

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or other compensation shall not be indicated in any other expense category.

Failure to provide the Profit and Loss Statement described above, within the prescribed time allowed, shall be cause for the GENERAL MANAGER to call for an immediate audit of the CONCESSION operations. CONCESSIONAIRE shall be charged for the full cost of labor, mileage, and materials expended in the investigation and preparation of the audit, plus 30 percent (30%) of said costs for administrative overhead.

All records obtained or created in connection with CITY's inspections of record or audits, will be or become subject to public inspection and production as public records, except to the extent that certain records or information are not required by law to be disclosed.

SEC. 16 REGULATIONS, INSPECTION, AND DIRECTIVES:

A. Regulations

The operations conducted by CONCESSIONAIRE pursuant to this CONTRACT shall be subject to:

1. All applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the DEPARTMENT;
2. All orders, directions or conditions issued, given or imposed by GENERAL MANAGER with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas or public areas adjacent to the PREMISES;
3. All applicable laws, ordinances, statutes, rules, regulations or orders, including environmental, of any governmental authority, federal, state or municipal, having jurisdiction over the DEPARTMENT's or CONCESSIONAIRE's operations;
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons; and
5. This CONTRACT is subject to the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., and the Living Wage Ordinance (LWO) Section 10.37 et seq. of the Los Angeles Administrative Code in accordance with the Certification attached hereto as Exhibit E and incorporated by this reference. The Ordinances require that unless specific exemptions apply, all employers (as defined) under contracts primarily for the furnishing of services to or for the CITY and that involve an expenditure or receipt in excess of Twenty Five Thousand Dollars (\$25,000) and a contract term of at least three (3) months; lessees; licensees; or certain recipients of CITY financial assistance, generally shall provide the following:
 - (a) Retention by a successor CONCESSIONAIRE for a ninety (90)-day transition period, the employees who have been employed for the preceding twelve (12) months or more by the terminated CONCESSIONAIRE or subcontractor, earning less than Fifteen Dollars (\$15.00) per hour in salary or wage, as provided for in the SCWRO;

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- (b) Payment of a minimum initial wage rate to employees as defined in the LWO of Seven Dollars and Fifty-One Cents (\$7.51) per hour with health benefits of at least One Dollar and Twenty Five Cents (\$1.25) per hour or, otherwise Eight dollars and Seventy Six Cents (\$8.76) per hour to be adjusted annually;
- (c) Provision for at least twelve (12) compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time off for sick leave.
- (d) CONCESSIONAIRE further pledges that it will comply with federal law proscribing retaliation for union organizing.

Under the provisions of Section 10.36(c) and Section 10.37.5(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this CONTRACT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONCESSIONAIRE, lessee, licensee, or financial assistance recipient violated the provisions of the referenced Code sections.

- 6. This CONTRACT is subject to the policy of the CITY of Los Angeles regarding Burma contracting: Section 10.38, et seq., Article 12, Chapter 1, Division 10 of the Los Angeles Administrative Code. CONCESSIONAIRE is required to complete the Certification Regarding Compliance with Burma which is attached hereto as Exhibit H and incorporated herein by this reference. The policy restricts the CITY from contracting for goods and services with persons or entities doing business in or with Burma (Myanmar) and requires contracting parties to submit a statement under penalty of perjury regarding their Burma business connections. Pursuant to Section 10.38.5 of the Los Angeles Administrative Code, CITY has the authority to terminate this CONTRACT and to refuse payment of goods received or services performed if CITY determines that CONCESSIONAIRE was ineligible under this policy at the time of entering into this CONTRACT or became ineligible thereafter.
- 7. This CONTRACT is subject to the Child Support Ordinance as defined in Section 10.10, Article 1, Chapter 1, Division 10 of the Los Angeles Administrative Code Child Support Assignment Orders. CONCESSIONAIRE is required to complete a Certification of Compliance with Child Support Obligations, which is attached hereto as Exhibit I and incorporated herein by this reference. Pursuant to this Section, CONCESSIONAIRE (and any subcontractor providing services to the CITY under this CONTRACT) shall (1) fully comply with all State and Federal employment reporting requirements for CONCESSIONAIRE or CONCESSIONAIRE's subcontractor's employees applicable to Child Support Assignment Order; (2) certify that the principal owner(s) of CONCESSION and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notice of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230, et seq.; and (4) maintain such compliance throughout the Term of this CONTRACT. Pursuant to Section 10.10b of the Los Angeles Administrative Code, failure

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of CONCESSIONAIRE or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of CONCESSION or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this CONTRACT subjecting this CONTRACT to termination where such failure shall continue for more than ninety (90) days after notice of such failure to CONCESSIONAIRE by CITY.

CONCESSIONAIRE shall comply with the Child Support Compliance Act of 1998 of the State of California Employment Development Department. CONCESSIONAIRE assures that to the best of its knowledge it is fully complying with the Earnings Assignment orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in subdivision (1) of the Public Contract Code 7110.

8. It is the goal of the CITY to promote and facilitate the establishment and implementation of child care policies and practices which address the critical un-met local need for quality, affordable child care services. The CITY encourages all of its vendors to adopt a stated policy on child care. CONCESSIONAIRE shall complete and submit the Child Care Declaration Statement contained in Exhibit J.
9. Consistent with Executive Directive No. 57, Job Training and Employment Policy, it is the policy of the CITY to promote and encourage the employment of disadvantaged youth and adult CITY residents who have been trained for employment under the CITY's Job Training Partnership Act (JTPA) Program. CONCESSIONAIRES with revenues in excess of \$500,000 must complete and submit the attached "Declaration of Contractor in Compliance with City of Los Angeles Job Training and Employment Policy," incorporated by this reference and attached as EXHIBIT K.
10. This CONTRACT is subject to the Compliance with Year 2000 Policy. CONCESSIONAIRE assures that all hardware, software and other computer-related products and/or services purchased or leased under this AGREEMENT shall be Year 2000 compliant. These systems/products shall be able to accurately process date/data, including calculating and/or comparing data between the twentieth and twenty-first centuries, years 2000, and leap year calculations to the extent that other information technology used in combination is compatible. CONCESSIONAIRE shall require from its vendors written confirmation that the products and/or services are year 2000 compliant.
11. CONCESSIONAIRE shall comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq. and with the provisions of the Certification Regarding Compliance with the Americans with Disabilities Act which is attached hereto as Exhibit L and incorporated herein by this reference.

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B. Permissions

Any permission required by the CONTRACT shall be secured in writing by CONCESSIONAIRE from CITY or the GENERAL MANAGER and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the GENERAL MANAGER.

C. Right of Inspection

CITY, the GENERAL MANAGER, the UNITED STATES ARMY, CORPS OF ENGINEERS, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection and observation of CONCESSIONAIRE's operation. During these inspections, they shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place upon the PREMISES. Said inspections may be made by persons identified to CONCESSIONAIRE as CITY or UNITED STATES ARMY, CORPS OF ENGINEERS employees, or may be made by independent contractors engaged by CITY or UNITED STATES ARMY, CORPS OF ENGINEERS. Inspections may be made for the purpose set forth below, however, the enumerations below shall not be construed to limit CITY's or UNITED STATES ARMY, CORPS OF ENGINEERS' right of inspection for any purpose incidental to the rights of CITY or UNITED STATES ARMY, CORPS OF ENGINEERS:

1. To determine if CONCESSIONAIRE is complying with the terms and conditions of the CONTRACT.
2. To observe transactions between the CONCESSIONAIRE and patrons in order to evaluate the quality and quantities of services provided or items sold or dispensed, the courtesy extended to and method of dealing with the public, the performance and caliber of CONCESSIONAIRE's employees, and the methods for recording receipts.

The information gathered on these inspections will be used to evaluate CONCESSIONAIRE in order to provide a basis for an action by CITY for the termination, renewal, denial, or closure of the concession or for any other appropriate action.

D. Control of Premises

CITY shall have absolute and full control of the building and all its appurtenances during the term of the CONTRACT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by CITY.

E. Nondiscrimination

The CONCESSIONAIRE shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and CITY. In performing this CONTRACT, the CONCESSIONAIRE shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition. The CONCESSIONAIRE shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. If this CONTRACT contains a consideration in excess of \$500 but not more than \$5,000,

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the Equal Employment practices provisions of this CONTRACT shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.3, in which event said provisions are incorporated herein by this reference. If this CONTRACT contains a consideration in excess of \$5,000, the Affirmative Action Program of this CONTRACT shall be the mandatory contract provisions set forth in Los Angeles Administrative Code Section 10.8.4, in which event said provisions are incorporated herein by this reference. The CONCESSIONAIRE shall also comply with all rules, regulations, and policies of CITY's Department of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by said Office. Any subcontract entered into by the CONCESSIONAIRE relating to this CONTRACT, to the extent allowed hereunder, shall be subject to the provisions of this Section.

F. Name of CONCESSION

The name of the CONCESSION, Encino-Balboa Golf Professional Shop/Driving Range, shall not be used in conjunction with any other business venture during or after the term of the CONTRACT.

SEC. 17 TERMINATION:

A. By CITY

CITY shall have the right to terminate this CONTRACT in its entirety and all rights ensuing therefrom as provided by applicable law or upon giving a thirty (30) day prior, written notice to CONCESSIONAIRE if any one or more of the following events occur:

1. The happening of any act which results in the suspension or revocation of the rights, powers, licenses, permits or authorizations necessary for the conduct and operation of the business authorized herein for a period of more than thirty (30) days;
2. CONCESSIONAIRE becomes a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution and, in the opinion of the GENERAL MANAGER, such action changes control of the CONCESSION;
3. CONCESSIONAIRE fails to keep, perform or observe any promise, term, covenant or condition set forth in this CONTRACT on its part to be kept, performed or observed after receipt of the aforementioned written notice of default from CITY or GENERAL MANAGER, except where fulfillment of CONCESSIONAIRE's obligation requires activity over a period of time and CONCESSIONAIRE has commenced to perform whatever may be required within ten (10) days after receipt of such notice and diligently continues such performance without interruption except for causes beyond its control. In instances of health and safety which may pose an immediate threat, the thirty (30) day prior notice shall not apply and notice may be given effective immediately;
4. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ninety (90) days and which does, or as a direct consequence of such process will, interfere with CONCESSIONAIRE's use of the PREMISES or with its operations under this CONTRACT;

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5. CONCESSIONAIRE becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the CONCESSION areas;
6. By order or decree of court, CONCESSIONAIRE is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of CONCESSIONAIRE seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;
7. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against CONCESSIONAIRE and is not dismissed within one hundred twenty (120) days;
8. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONCESSIONAIRE, and such possession or control continues in effect for a period of one hundred twenty (120) days;
9. Any lien is filed against the PREMISES because of any act or omission of CONCESSIONAIRE and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within sixty (60) days of discovery or notification of lien by CITY; or
10. CONCESSIONAIRE voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

No acceptance by CITY of the fees and charges or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by CONCESSIONAIRE, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY to terminate this CONTRACT on account of such default.

No waiver by CITY at any time of any default on the part of CONCESSIONAIRE in the performance of any terms, covenants or conditions hereof to be performed, kept or observed by CONCESSIONAIRE shall be or be construed to be a waiver at any time thereafter by CITY of any other or subsequent default in performance of any said terms, covenants or conditions, and no notice by CITY shall be required to restore or revive time as of the essence hereof after waiver by CITY of default in one or more instances.

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B. CITY'S Right of Reentry:

CITY shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of CONCESSIONAIRE under this CONTRACT.

C. Additional Rights of CITY:

CITY, upon termination of this CONTRACT, or upon reentry, regaining or resumption of possession of the PREMISES, may occupy said PREMISES and shall have the right to permit any person, firm or corporation to enter upon the PREMISES and use the same. Such occupation by others may be of only a part of the PREMISES, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in this CONTRACT. CITY shall also have the right to repair or to make such structural or other changes in the PREMISES as are necessary in its judgment to maintain the suitability thereof for uses and purposes similar to those granted under this CONTRACT without affecting, altering or diminishing the obligations of CONCESSIONAIRE hereunder.

D. Survival of CONCESSIONAIRE's Obligations:

In the event this CONTRACT is terminated by CITY as described in paragraph A of this Section, or in the event CITY reenters, regains or resumes possession of the PREMISES, all of the obligations of CONCESSIONAIRE hereunder shall survive and shall remain in full force and effect for the full term of this CONTRACT and, subject to CITY's obligation to mitigate damages, the amount of the fees and charges shall become due and payable to CITY to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place. CITY may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

The amount of damages for non-payment of amounts due during the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any fees and charges received by CITY from a succeeding CONCESSIONAIRE, shall be the greater of:

1. CONCESSIONAIRE's minimum annual fee obligation, less the amount paid prior to the effective date of termination; or
2. On account of CONCESSIONAIRE's percentage of annual gross receipts, the appropriate amount if in excess of said minimum annual fee, which gross receipts would have been received by CONCESSIONAIRE during the balance of the term hereof if there had been no termination, reentry, regaining or resumption of possession. For the purpose of calculation hereunder, the amount of gross receipts shall be derived by taking CONCESSIONAIRE's total gross receipts during the month immediately preceding termination, dividing said total by thirty (30) and then multiplying the result by the number of days in the balance of the term hereof.

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It is understood and agreed that the damages specified above shall not affect or be construed to affect CITY's right to such damages in the event of termination, reentry, regaining or resumption of possession where CONCESSIONAIRE has not received any actual gross receipts under this CONTRACT or to affect CITY's right to recover other types of damages.

E. Waiver of Redemption and Damages:

CONCESSIONAIRE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner.

F. By CONCESSIONAIRE:

This CONTRACT may be terminated by CONCESSIONAIRE by giving a thirty (30) day written notice to CITY upon the happening of one or more of the following events:

1. Any exercise of authority as provided herein which so interferes with CONCESSIONAIRE's use and enjoyment of the PREMISES as to constitute a termination, in whole or in part, of this CONTRACT; or
2. The breach or default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of sixty (60) days after receipt from CONCESSIONAIRE of written notice to do so; or
3. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission to act of CONCESSIONAIRE, its agents or employees, and the failure of CITY to repair or reconstruct said PREMISES within four (4) months after such destruction.

SEC. 18 SURRENDER OF POSSESSION:

CONCESSIONAIRE covenants and agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of this CONTRACT promptly, peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by CONCESSIONAIRE or CITY, normal use and wear and tear thereof excepted.

Subject to the provisions of SEC. 17 herein, within thirty (30) days, CONCESSIONAIRE shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES. If CONCESSIONAIRE fails to remove said property within that 30 days, said property shall be considered abandoned and CITY may dispose of same as it sees fit.

SEC. 19 INTEGRATED CONTRACT:

This CONTRACT sets forth all the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. This CONTRACT may be amended only as provided for in SEC. 20 hereof.

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SEC. 20 AMENDMENT:

All amendments hereto shall be in writing and signed by the persons authorized to bind the parties thereto. Written notice of any and all amendments shall be forwarded to the UNITED STATES ARMY, CORPS OF ENGINEERS for review and approval.

SEC. 21. CURRENT CITY OF LOS ANGELES BUSINESS TAX REGISTRATION CERTIFICATE:
CONCESSIONAIRE must obtain and presently hold the Business Tax Registration Certificate required by CITY, Business Tax Ordinance (Article 1, Chapter 2, sections 21.00 and following, of the Los Angeles Municipal Code). For the term of this CONTRACT, the CONCESSIONAIRE shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

SEC. 22 DAMAGE OR DESTRUCTION TO PREMISES:

A. Partial Damage

If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding, inundation, floods, the elements, public enemy or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided: if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

B. Extensive Damage

If the damages as described above in paragraph A, are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by GENERAL MANAGER as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

C. Complete Destruction

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, CONCESSIONAIRE may terminate this CONTRACT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs.

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D. **Limits of CITY'S Obligation Defined**

It is understood that, in the application of the foregoing provisions, CITY may, but shall not be obligated to repair or reconstruct the PREMISES. If CITY chooses to do so, CITY's obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurbishing/re-equipping shall be equivalent in quality to that originally installed.

SEC. 23 **APPLICABLE LAW APPLIES:**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, the County of Los Angeles and CITY. This CONTRACT shall be enforced and interpreted under the laws of the State of California and CITY.

SEC. 24 **VENUE:**

Venue of any action brought under this CONTRACT shall, at CITY's option, lie in Los Angeles County.

SEC. 25 **NOTICES:**

Written notices to CITY shall be addressed to:

City of Los Angeles
Department of Recreation and Parks
200 North Main Street, Room 1325
Los Angeles, CA 90012
Attn: General Manager
and

City of Los Angeles
Department of Recreation and Parks
Valley Region - Administrative Services
6335 Woodley Avenue
Van Nuys, CA 91406

Written notices to CONCESSIONAIRE hereunder shall, until CITY's receipt of written notice otherwise from CONCESSIONAIRE, be addressed to CONCESSIONAIRE at:

Family Golf Centers, Inc.
840 Apollo St., Suite 312
El Segundo, CA 90245

The execution of any such notice by GENERAL MANAGER shall be as effective for CONCESSIONAIRE as if it were executed by CITY, or by Resolution or Order of said CITY. All such notices may either be delivered personally to GENERAL MANAGER, in the one case, or to any officer or responsible employee of CONCESSIONAIRE in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

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SEC. 26 INTERPRETATION:

In each instance herein where CITY's or GENERAL MANAGER's approval or consent is required before CONCESSIONAIRE may act, such approval or consent shall not be unreasonably withheld.

If any provision of this CONTRACT is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this CONTRACT, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this CONTRACT is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

SEC. 27 UNITED STATES ARMY, CORPS OF ENGINEERS REQUIREMENTS:

This CONTRACT is granted subject to all terms and conditions of Recreational Lease No. DACW 09-1-67-11 between the CITY and the UNITED STATES ARMY, CORPS OF ENGINEERS and will not be effective until the terms and conditions hereof are approved by the District Engineer.

A. Flooding

CONCESSIONAIRE, in consideration of the granting of the contract agrees to release and to hold the UNITED STATES ARMY, CORPS OF ENGINEERS, Los Angeles County Department of Public Works, and the CITY harmless from any and all claims or causes of action for damages which may arise or accrue to said CONCESSIONAIRE, its officers, agents, servants, employees or others who may be on the PREMISES at its invitation or the invitation of anyone of them, by reason of injuries from the entry upon or the use of the PREMISES by the UNITED STATES ARMY, CORPS OF ENGINEERS, the Los Angeles County Department of Public Works, the CITY or any of them at any time, for any purpose necessary or convenient in connection with river and flood control work, or for the removal of timber required or necessary for such work, or by reason of the flooding of the leased premises, in the event that such flooding is necessary in connection with flood control work. Notwithstanding the foregoing, in the event that such flooding causes CONCESSIONAIRE to cease operation of the CONCESSION for a period of three (3) or more consecutive days and such cessation renders it impossible for CONCESSIONAIRE to meet its full annual minimum rental guarantee due to the reduction in gross receipts attributable to such cessation then the minimum annual rental guarantee shall be reduced by an amount obtained by dividing the number of days of such cessation by 365 and multiplying the result times the annual minimum rental guarantee.

The CONCESSIONAIRE expressly agrees to make no claim under flood insurance issued under any Federal Government program for loss to any property of the CONCESSIONAIRE located on the premises which arises from or is incident to the flooding of the premises by the Government.

B. Public Use

All project land and water areas which are open to the public shall be available for use and employment by the public without regard to age, sex, sexual orientation, religion, race, color, creed, national origin, or disabilities. No CONCESSIONAIRE of a project area under an agreement providing for a public or quasi-public use, and no sub-concessionaire providing a service to the public, including facilities and accommodations, shall discriminate against any person or persons because of age, sex, sexual orientation, religion, race, color, creed, national origin or disabilities in the conduct of its operation under this CONTRACT.

ENCINO-BALBOA GOLF PROFESSIONAL CONCESSION
Encino/Balboa Family Golf Centers, Inc.

C. Disaster Assistance

CONCESSIONAIRE shall waive all Federal disaster assistance due to reservoir or stream flow inundation.

D. Evacuation Plan

CONCESSIONAIRE shall post at the PREMISES in a conspicuous place an evacuation plan which provides evacuation instructions in the event of an emergency and directs people to the appropriate exits. In the event of an emergency, CONCESSIONAIRE shall be responsible for the evacuation of the PREMISES.

SEC. 28 TIME OF THE ESSENCE:

Time is of the essence for all provisions of this CONTRACT.

SEC. 29 INCORPORATION OF DOCUMENTS:

The following Exhibits are to be attached to and made part of this CONTRACT by reference:

- A - CITY'S Request for Proposals dated 4/10/98.
- B - CONCESSIONAIRE'S proposal dated 6/23/98 which includes:
 - 1. Affirmative Action Requirements and Plan
 - 2. MBE/WBE and Other Business Outreach Policy Statement
- C - CONCESSION Premises Map
- D - Insurance Requirements Form
- E - Service Contractor Worker Retention and Living Wage Ordinances
- F - Lease No. DACW 09-1-67-11 between the City of Los Angeles, Department of Recreation and Parks and the United States Army, Corps of Engineers.
- G - U.S. Army Corps of Engineers Safety and Health Requirements Manual
- H - Burma (Myanmar) Ordinance
- I - Child Support Ordinance
- J - Child Care Policy
- K - Job Training and Employment Policy
- L - Americans with Disabilities Act Policy

In the event of any conflict or inconsistency between the provisions of this CONTRACT and those of the documents incorporated herein by reference, the following documents will have priority in the order listed below:

- 1. Master Lease between the City of Los Angeles, Department of Recreation and Parks and the United States Army, Corps of Engineers (Exhibit F).
- 2. This CONTRACT (Operating Concession Contract).
- 3. CITY's Request for Proposal (Exhibit A).
- 4. CONCESSIONAIRE's proposal dated June 23, 1998 (Exhibit B).

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ENCINO-BALBOA GOLF PROFESSIONAL CONCESSION
Encino/Balboa Family Golf Centers, Inc.

IN WITNESS WHEREOF, THE CITY OF LOS ANGELES, has caused this CONTRACT to be executed in its behalf by its duly authorized Board of Recreation and Park Commissioners, and CONCESSIONAIRE has executed the same as of the day and year herein below written.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

Date: _____, 19____

BY: _____
STEVEN L. SOBOROFF, President

BY: _____
Secretary

ENCINO/BALBOA FAMILY GOLF CENTERS,
INC.

Date: _____, 19____

BY: Paula J. Charles
Secretary

BY: _____

APPROVED AS TO FORM:

Date: _____, 19____

JAMES K. HAHN, City Attorney

BY: _____
MARK BROWN, Assistant City Attorney

ENCINO-BALBOA GOLF PROFESSIONAL CONCESSION
Encino/Balboa Family Golf Centers, Inc.

IN WITNESS WHEREOF, THE CITY OF LOS ANGELES, has caused this CONTRACT to be executed in its behalf by its duly authorized Board of Recreation and Park Commissioners, and CONCESSIONAIRE has executed the same as of the day and year herein below written.

Date: Nov. 3, 1999

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

BY: Steven L. Soboroff
STEVEN L. SOBOROFF, President

BY: S. L. Gantroy
Secretary

Date: _____, 19____

ENCINO/BALBOA FAMILY GOLF CENTERS,
INC.

BY: W. A. Hahn

BY: _____

APPROVED AS TO FORM:

Date: 11-9, 1999

JAMES K. HAHN, City Attorney

BY: Mark Brown
MARK BROWN, Assistant City Attorney